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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

MARGARET M. HECKLER, Secretary of Health and Human Services, et al., APPELLANTS

v.

STEPHEN J. ROY, et al.

On Appeal from the United States District Court for the Middle District of Pennsylvania

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Response of Appellee Walter Cohen, Secretary of the Pennsylvania Department of Public Welfare, in Support of Jurisdictional Statement of Appellants Heckler & Bloch

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PROCEDURAL HISTORY

On August 17, 1983, appellees Stephen J. Roy and Karen Miller filed a complaint with the United States District Court for the Middle District of Pennsylvania seeking relief from the requirement of state and federal law[1] that participants in the Aid to Families with Dependent Children (AFDC) program and the Food Stamp program furnish the Pennsylvania Department of Public Welfare (DPW) with the social security numbers of their household members as a condition of receiving program benefits. Plaintiffs claimed that this requirement interfered with their right to the free exercise of religion in violation of the First Amendment to the United States Constitution. Named as defendants were

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[1] See 62 P.S. § 432.2(b)(3) (Pennsylvania Public Welfare Code); 42 U.S.C. § 602(a)(25) (AFDC); 7 U.S.C. § 2025(e) (Food Stamps).

the state and federal officials charged with the administration of these programs: Walter Cohen, the Secretary of DPW, Margaret Heckler, the Secretary of Health and Human Services, and John Block, the Secretary of Agriculture.

Following a four day bench trial before the Honorable Malcolm S. Muir, the district court found the social security number requirement unconstitutional as applied to plaintiffs. The defendants were enjoined from refusing to provide cash assistance, medical assistance, and food stamps to the plaintiffs' daughter, Little Bird of the Snow, for the plaintiffs' failure to provide a social security number for her. The district court's opinion, filed on June 22, 1984, is published at 590 F. Supp. 600 (M.D. Pa. 1984).

Defendants Heckler and Block filed a notice of appeal to this Court

on July 18, 1984 (hereinafter the federal appeal). Defendant Cohen filed a notice of appeal to this Court on July 20, 1984.(hereinafter the state appeal). On September 11, 1984, Justice Brennan extended the time within which to docket the federal appeal to and including November 15, 1984. On September 12, 1984, Justice Brennan extended the time within which to docket the state appeal to and including November 19, 1984.

The Solicitor General filed a jurisdictional statement and the federal appeal was docketed on November 13, 1984. Rather than pursue his separate appeal, defendant Cohen filed a motion to dismiss the undocketed state appeal on November 21, 1984.[2]

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[2]The district court granted this motion and dismissed the appeal on November 27, 1984.

INTEREST OF SECRETARY COHEN

From the outset of this litigation, Secretary Cohen has chosen to follow the lead of his federal co-defendants.[3] Thus, in the district court, the Secretary adopted by reference the federal defendants' brief in support of their motion for summary judgment and their proposed findings of fact and conclusions of law. At trial, Secretary Cohen chose to present only one witness and his counsel's questioning of witnesses and oral argument was designed to supplement that of federal trial

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[3]This strategy is consistent with the status of the AFDC and Food Stamp programs as joint federal-state undertakings. In order to receive federal funds provided under these programs, Pennsylvania was obliged to comply with federal conditions placed on that participation. Miller v. Youakim, 440 U.S. 125 (1979); King v. Smith, 392 U.S. 309 (1968), including the requirement that recipients of assistance furnish their social security numbers as a condition of eligibility. See 42 U.S.C. § 602(a)(25); 7 U.S.C. §§ 2020(g), 2025(e).

counsel. This course of action was followed because the interests of Secretary Cohen in this action are indistinguishable from those of Secretaries Heckler and Block.

At pages 8-10 of the Solicitor General's jurisdictional statement, he highlights a variety of reasons why social security numbers are necessary to the administration of these massive public assistance programs. The computerization of data systems is, of course, not limited to the federal government. State agencies as well use computer cross-matching of the massive amounts of data collected to verify applicants' resources and income and to ensure that benefits are not being obtained through fraudulent means.

In view of the identity of interests of the state and federal defendants, and the ability and intent

of the federal defendants to present on appeal every contention in support of reversal that would be argued by Secretary Cohen, it seems clear that it would have been an unnecessary duplication of effort for Secretary Cohen to continue with his own appeal.[4] Thus, no inference adverse to the position of the federal appellants should be drawn from Secretary Cohen's dismissal of his separate appeal.

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[4]Should this Court agree with the Solicitor General that the district court's ruling was erroneous as a matter of law, there will be no basis for continuation of the injunction issued by the district court and it will have to be vacated as against all defendants, whether or not each one appealed. Pasadena City Board of Education v. Spangler, 427 U.S. 424, 437 (1976); Hotel & Restaurant Employees & Bartenders International Union, Local 531 v. Wisconsin Employment Relations Board, 427 U.S. 132, 139 (1976); Local No. 438 Construction & General Laborers' Union v. Curry, 371 U.S. 542, 549 (1963); Local No. 438 Construction & General Laborers' Union v. Curry, 371 U.S. 542, 549 (1963); Hotel & Restaurant Employees International Union, Local 25 v. Wilson, 325 U.S. 693, 699 (1945); Textile Workers Union of America, CIO v. Arista Mills Co., 308 U.S. 403, 404 (1940

THE QUESTION IS SUBSTANTIAL

At issue in this case is whether Congressional directives that social security numbers be required of all recipients of federal-state welfare programs should be set aside due to an asserted infringement of free exercise rights of one individual. The district court's invalidation of Congress' mandate seriously jeopardizes the government's ability to combat fraud in federal-state welfare programs and to promote the administrative efficiency of such programs through the uniform application of a logical, neutral rule that even the district court found serves a compelling governmental interest.

The district court's ruling, based as it was on a flawed premise -- that the smaller the number of persons objecting to a neutral requirement on religious grounds, the greater their

claim to an exemption from the requirement -- conflicts with this Court's recent rulings in Bob Jones University v. United States, ___ U.S. ___, 103 S.Ct. 2017 (1983), and United States v. Lee, 455 U.S. 252 (1982). As those cases demonstrate, if a religious belief cannot be accomodated with a compelling governmental interest and no less restrictive means is available to achieve the governmental interest, the government's interest must prevail. When that test is applied to the facts of this case, it is clear that the individual's interest in religious liberty should have yielded to the greater interest of society in the efficient and effective administration of its welfare programs. In ruling to the contrary, the district court committed reversable error.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted,

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